

# Order

Michigan Supreme Court  
Lansing, Michigan

December 17, 2010

Marilyn Kelly,  
Chief Justice

141394

MARY RUTH CLARK,  
Petitioner-Appellee,

v

SWARTZ CREEK COMMUNITY SCHOOLS  
BOARD OF EDUCATION,  
Respondent-Appellant.

SC: 141394  
COA: 295830  
State Tenure Comm: 09-000006

Michael F. Cavanagh  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman  
Diane M. Hathaway  
Alton Thomas Davis,  
Justices

On order of the Court, the application for leave to appeal the April 12, 2010 order of the Court of Appeals is considered, and it is **DENIED**, because we are not persuaded that the questions presented should be reviewed by this Court.

MARKMAN, J. (*concurring*).

I concur in this Court's decision to deny leave to appeal. The Legislature established the State Tenure Commission and vested with it "such powers as are necessary to carry out and enforce the provisions of [the Teachers' Tenure Act]," including the authority to determine whether a school district has established "reasonable and just cause" for a tenured teacher's discharge. MCL 38.137; MCL 38.101. A decision of the Tenure Commission must be upheld if there is "competent, material, and substantial evidence on the whole record" to support the Tenure Commission's findings. Const 1963, art 6, § 28. Therefore, the job of this Court is not to determine whether, in our own judgment, we believe a teacher should or should not be discharged, but only whether there is "competent, material and substantial evidence" on the record to sustain the decision of the Tenure Commission. There may well be instances in which individual justices share the school district's concerns regarding the fitness of a teacher, but in which nonetheless we are obligated under the law to uphold the Commission. I fully understand the concerns of the school district, and parents, that children not be instructed by a person whom they believe to be mentally unfit. Under the law enacted by their Legislature, however, the *district* bears the burden of proof of demonstrating this fact.



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I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 17, 2010

*Corbin R. Davis*

Clerk